IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No. 21136 of 1998

Between:

1 Indian Bank Employees Association, represented

by its General Secretary, B. Vijaya Gopal Rao,

S/o B. Kishan Rao, Hyderabad.
2 G. Narasimha, S/o Somaiah, Marriguda, (Via) Ramagiri, Nalgonda.

..... PETITIONERS

AND

1 The Chairman and Managing Director, Indian Bank, Madras,
2 The Zonal Manager, Indian Bank, Himayatnagar, Hyderabad.
3 The Branch Manager, Indian Bank, Nalgonda.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus; (a) declaring the proceedings No. HZO:IRC:58:98, dt. 28.5.98 and PRNL/GB/ID/B-6/97, dt. 7-1-1998 of the 2nd respondent i.e. Zonal Manager, Indian Bank Zonal Office, Hyderabad, in rejecting the case of the 2nd petitioner for absorption on permanent basis as Sub staff under the respondent Bank as bad, illegal, arbitrary and discriminative and further violative of Articles 14,16 and 21 of the Constitution of India; (b) Further declare that the 2nd petitioner is entitled for absorption on permanent basis under the respondent Bank w.e.f. 12-10-1990 i.e. the date of initial engagement with all consequential benefits; (c) Consequentially direct the respondents to absorb the 2nd petitioner permanently and regularise his services under the Respondent Bank w.e.f. 12-10-1990 with all consequential benefits.

Counsel for the Petitioners: Mr. W.B.SRINIVAS

Counsel for the Respondents: Mr. P.SURESH

The Court made the following :

O R D E R:

This Writ Petition is filed by the Indian Bank Employees Union (petitioner No.1) and one G.Narasimha (petitioner No.2) seeking a Mandamus declaring Proceedings No.HZO:IRC:58:98, dated 28-5-1998 and PRNL/GB/ID/B-6/97, dated 7-1-1998 of the 2nd respondent rejecting the case of the 2nd petitioner for absorption on permanent basis as sub-staff under the respondent-Bank as arbitrary and illegal, to declare that the 2nd petitioner is entitled for absorption on permanent basis under the respondent-Bank with effect from 12-10-1990 i.e., the date of initial engagement and to absorb the 2nd petitioner permanently and regularize his service with effect from 12-10-1990 with all consequential benefits.

According to the petitioners, 2nd petitioner has been working in the respondent-Bank at Nalgonda Branch with effect from 12-10-1990 as casual sub-staff. He worked initially during the year 1990 for about 60 days, in 1991 for about 140 days, in 1992 for about 105 days, in 1993 for about 139 days and in 1994 for about 219 days. From 1995 onwards, 2nd petitioner worked for about 300 days in every calendar year and is in continuous employment. Presently, he is working with the respondent-Bank. There are clear vacancies existing in the cadre of sub-staff in the respondent-Bank at Nalgonda Branch and also other branches. He rendered althrough unblemished service to the utmost satisfaction of his superiors. He is performing all the duties of sub-staff including cash remittances etc. For the purpose of regularization of his services, Indian Bank, Nalgonda Branch was advised by the Zonal Office through its letter No.PRNC/C/113, dated 23-8-1990 to approach the Employment Exchange for sponsoring candidates for the purpose of empanelment of sub-staff. Thus, the Indian Bank, Nalgonda Branch approached the Employment Exchange. The District Employment Officer, Nalgonda sent names of 18 candidates including the 2nd petitioner for considering their cases for the post of sub-staff vide letter dated 21-5-1993. Earlier also, petitioners filed Writ Petition No.7623 of 1995 in this Court

seeking a direction to regularize the services of 2nd petitioner, since the 2nd petitioner has been working from 1990 onwards except for artificial breaks. It was also brought to the notice of this Court in the said Writ Petition that the Employment Exchange also sponsored the name of the 2nd petitioner for the post in which he was already working on temporary basis and thus was eligible and entitled for being considered to be put in the sub-staff panel to be absorbed on permanent basis. A counter affidavit was filed in the said Writ Petition stating that the 2nd petitioner herein did not get his name sponsored through Employment Exchange and further in view of the ban imposed by the Central Government, the case of the 2nd petitioner could not be considered. The above Writ Petition was disposed of on 21-7-1997 with a direction to consider the case of the 2nd petitioner based on his representation and after giving a personal hearing. In pursuance of the directions of this Court, the 2nd petitioner was given a personal hearing on 8-10-1997 and he had categorically brought to the notice of the 2nd respondent that the persons, who are juniors to him, were given permanent appointment, whereas he was meted out with injustice. Respondent No.2 issued a letter dated 7-1-1998 rejecting the claim of the 2nd petitioner and expressed his inability to consider his case as under:

> "In terms of guidelines issued by the Government of India, empanelment of temporary sub staff is to be done through Employment Exchange by the competent authority. Whereas, your engagement at our Nalgonda Branch is purely on casual basis for exigencies. In the sense that Bank had neither called for any list of candidates from Employment Exchange nor conducted any interview and selected at the time of initial engagement on 12-10-1990. Moreover, as the Government of India has imposed restriction on further empanelment of temporary sub-staff vide their letter dated 16-8-1990, we cannot include your name in the panel of temporary sub-staff.
>
> The persons appointed are all from the approved panel of temporary sub-staff only."

It is also stated that with respect to the said letter, 1st petitioner-Union addressed a letter to the Deputy General Manager of the respondent-Bank at Chennai bringing to his notice about the absorption of juniors to the 2nd petitioner, who were engaged much later to him. Further, the Bank authorities were also magnanimous to absorb the Drivers, who were engaged by the Executives in their personal capacity, without being sponsored by Employment Exchange nor empanelled in the panel of temporary sub-staff. Whereas, the 2nd petitioner was paid by the Bank directly and

he discharged duties like cash remittances etc. The respondent-Bank being a public sector undertaking and a model employer cannot resort to discriminate the 2nd petitioner. Petitioner No.2 had put in more than seven year of service as on the date of filing of Writ Petition (as on today more than 14 years). The alleged ban imposed by the Central Government was on 16-8-1990 i.e. nearly 8 years prior to the date of filing of Writ Petition and the ban does not exist as on the date of filing of Writ Petition. Further, the Bank had appointed persons working on temporary basis for the period from 1-1-1982 to 31-12-1989 during the year 1993-94. The five persons named were juniors to the 2nd petitioner and they were initially engaged only on 7-10-1991 and December,1991, whereas the 2nd petitioner was initially engaged on 12-10-1990 in an existing vacancy. If really, the ban existed from 16-8-1990, the respondent-Bank would not have called for names from Employment Exchange on 21-5-1993 and the Employment Exchange would not have sponsored the names of candidates. In fact, one person by name E.Ramaiah, who was working as permanent sub-staff expired on 25-5-1995 and the said vacancy still exists. Therefore, the impugned Proceedings are arbitrary and illegal and the 2nd petitioner is entitled for absorption on permanent basis as sub-staff. A detailed counter affidavit has been filed by the 2nd respondent denying the allegations made by the petitioners. *Inter alia* it is stated that the matter is already decided by this Court in W.P.No.18998 of 1997 and batch, wherein it was held that the persons engaged as casual employees cannot claim to engage them as a matter of right. The discretion was left to the Bank and if the competent authority feels necessity, it may prepare a list and if the petitioners therein qualify for such empanelment, their claims may be considered and if the Bank wants to engage any person on temporary basis in the leave vacancy, *de hors* the list, the Bank may consider the claims of petitioners therein before considering the claims of any fresh candidates. Petitioners herein filed earlier W.P.No.7623 of 1995 which was disposed of on 21-7-1997. In the instant case, the very same relief is sought; therefore, the present writ petition is not maintainable as it is hit by principles of *res judicata.* Petitioner No.2 was engaged only on casual basis and that will not confer any right on him to claim the relief of regularization. Petitioner No.2 was not engaged continuously upto 1995. However, from 1995 onwards he is regularly engaged as a casual employee only. Further, the Central Government has imposed ban on creation of fresh empanelment of temporary sub-staff and the ban is still in force. Therefore, the case of petitioner No.2

cannot be considered for regularization. Regarding the five persons purported to be juniors to petitioner No.2, the process of interview for empanelment commenced prior to the engagement of petitioner No.2. Therefore, petitioners cannot have any say that the persons, who are appointed are juniors to petitioner No.2. Further, petitioner No.2 cannot compare his case with the case of personal Drivers of the Executives of the Bank, since it is covered by a separate settlement. The Bank has not shown any discrimination against the 2nd petitioner for regularization of his services. Everything was done in accordance with law and only in view of the fact that the ban is imposed the services of the 2nd petitioner could not be regularized.

Heard both sides.

It is the contention of the learned counsel for the petitioners that the 2nd petitioner was appointed much prior to the five persons whose names are mentioned in the writ affidavit i.e. on 12-10-1990, whereas the five persons were appointed as shown below

"1. M. Balaraju 07 10 91

2. B.M. Shankar 07 10 91

3. B.V.Saradhi --

4. P. Srihari Dec '91

5. Omkarachary Dec '91"

and as seen from the above none of them have been appointed prior to the 2nd petitioner. In fact, they are all appointed for the first time on the dates shown against their names. He further asserted that even in the year 1993, the name of the 2nd petitioner was sponsored by the District Employment Officer, Nalgonda by his letter dated 21-5-1993, and his name finds place at Sl.No.17. But, nonetheless, the case of the 2nd petitioner was not considered and the other persons, who are similarly situated were considered. Some of the casual employees, in fact, approached this Court by filing W.P.No.19747 of 1996 and batch and this Court disposed of the said writ petitions on 17-3-1998 holding that insofar as preparing a second list is concerned, if the competent authority feels such necessity, then if the petitioners therein were qualified for empanelment, their names may be considered for such

empanelment. It was also made clear that the authorities have to consider the claims of petitioners therein before considering the claims of any fresh candidates. It is asserted in the present writ petition that the petitioners therein were all considered and appointed on regular basis. In other words, in the case of the 2nd petitioner herein, no such action was taken and he is being continued on casual basis, which is arbitrary and illegal.

Learned counsel for respondents rebutted the arguments of the learned counsel for petitioners relying on the assertions made by the respondents in their counter affidavit.

It is not disputed that the 2nd petitioner was working from 12-10-1990 as a casual employee, though it is disputed that he does not belong to sub-staff. Further, it was asserted that the ban was imposed on 16-8-1990, whereas, as per the impugned Proceedings dated 28-5-1998 all the five persons mentioned therein were all interviewed on 26-7-1990 and 9-10-1990. At least, the third person S.V. Saradhi could not have been interviewed on 9-10-1990, if really there was a ban as stated by the respondents. There is no answer for this. It is also not disputed that similarly situated persons whose names were sponsored by the District Employment Officer, Nalgonda on 21-5-1993 along with the 2nd petitioner were also absorbed into the services of the Bank as sub-staff. Further, it is also not disputed that many of the petitioners in W.P.No.19747 of 1996 and batch were also absorbed on regular basis. At least, thereafter, petitioner No.2 could have been considered for regular appointment, since it was the desire of this Court that the authorities had to consider the claim of the 2nd petitioner before considering the claims of any fresh candidates. Even, at this stage, the case of the petitioner No.2 was not considered. When the 2nd petitioner raised a dispute as to appointment and regularization of personal Drivers attached to the Executives of the Bank, the Bank came forward with a theory that a separate settlement was entered into between the management and those drivers; as such, the 2nd petitioner cannot compare himself on par with the said drivers and claim permanent absorption, which is most unfortunate. Though the ban purported to have been imposed on 16-8-1990, the five persons mentioned above were all appointed thereafter; whereas, the case of the 2nd petitioner was denied for regular appointment as sub-staff. Further, in the year 1993, when his name was sponsored by the Employment Exchange, they dug up some reasons for rejecting his case. His

case was not considered even on par with the writ petitioners in W.P.No.19747 of 1996 and batch as directed by this Court.

Petitioner No.2 has completed about 14 years of continuous service as on date. It is not the case of respondents that the 2nd petitioner was appointed by any backdoor method. Nowhere, it is stated by the respondents that the initial appointment of the 2nd petitioner was either illegal or irregular. Further, there is no complaint against the 2nd petitioner as to his efficiency and integrity. It is also not disputed that there are some vacancies still available in the sub-staff due to the death of one E.Ramaiah and also in other Branches. The only plea of respondents was that there is a ban and as such, the 2nd petitioner is not entitled for regularization. Petitioner No.2 was also appointed, assuming, as a casual employee along with others, there was nothing that came in the way of the respondents in considering the case of the 2nd petitioner except searching for some ruse or the other only to reject his case. Petitioner No.2 is entitled for being regularized on par with the said persons mentioned in the impugned Proceedings dated 28-5-1998. However, all his efforts thereafter went in vain and he filed W.P.No.7623 of 1995 and obtained an order from this Court directing the respondents to consider his case. In pursuance of those orders, again the case of the 2nd petitioner was considered and rejected by the impugned order. I am of the opinion that at every stage, the 2nd petitioner was discriminated. The theory of ban is only an invention for the purpose of rejecting the case of the 2nd petitioner. Such a ground ought not to have been taken having considered the case of S.V.Saradhi in the month of October,1990. The case of the 2nd petitioner was also not considered as directed by this Court. Therefore, I am of the considered view that the 2nd petitioner is entitled to be considered for regularization of his services from the date of his initial appointment as a sub-staff and for all consequential benefits, such as, pay scale, increments, seniority, promotion etc. This exercise shall be done by the respondents, within a period of three months from the date of receipt of a copy of this order, by ignoring the ban orders, if any, and also relaxing the service rules, if necessary.

Accordingly, the writ petition is disposed of. No costs.

01-10-2004

prk

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Chairman and Managing Director, Indian Bank, Madras,
2 The Zonal Manager, Indian Bank, Himayatnagar, Hyderabad.
3 The Branch Manager, Indian Bank, Nalgonda.

4. 2CD copies.